fessor Williston has resumed charge of Sales, and Professor Brannan is giving Damages. All first year and several second year courses are now divided into sections, a practice which has been greatly developed during the last few years. The present entering class is about the same size as that of last year. The total registration in the School is somewhat larger than formerly. Full statistics will appear in the December number.

THE GOVERNORSHIP OF KENTUCKY. — The consequences of the dismissal by the Supreme Court of the United States of the case of *Taylor* v. *Beckham*, 20 Sup. Ct. Rep. 890, for want of jurisdiction, are far-reaching, as well by reason of the political significance of the judgment, as because of the importance of a legal question involved. The election laws of Kentucky provided that all contested elections were to be tried by a committee chosen by lot from the members of the legislature, who should hear the evidence and report to the legislature, which body should determine the contest. The State Board of Election Commissioners having declared Taylor elected to the office of governor, Goebel, and at his death Beckham, contested the election. A contest board, chosen according to the forms of the law, — but fraudulently, as Taylor alleged, — heard the evidence, and reported in favor of Beckham. The legislature, without demanding the evidence, accepted this report as it stood and adjudged in favor of Beckham. Upon Taylor's refusal to surrender the perquisites of the office, Beckham brought *quo warranto* proceedings in the State Court, and obtained a judgment of ouster. Taylor then appealed and urged, among other things, that there had been fraud in the choice of the contest board, and that the legislature in accepting the report of that board acted without evidence and arbitrarily. The Kentucky Court of Appeals sustained the judgment on the grounds that the court could not question the validity of the legislature's record of the proceedings, and that the case did not come within the Fourteenth Amendment, as the office of governor was purely political and not property. Upon this latter point error was brought to the Supreme Court of the United States, where the case was dismissed for want of jurisdiction, the majority of the court holding that the right to a public office of a state was not protected by the Fourteenth Amendment. Mr. Justice Brewer, with whom concurred Mr. Justice Brown, while holding that a public office was property, nevertheless found due process of law in the fact that the forms of the election law had been complied with, and so concurred in the result. Mr. Justice Harlan, however, dissented strongly, and went so far as to say that the removal of Taylor from office was a deprival, according to the Fourteenth Amendment, not only of property but of liberty as well — the latter word meaning political freedom as well as protection from mere physical restraint; and that in determining what was due process of law regard must be had to substance and not merely to form.

Whether a public office may be considered as property within the Fourteenth Amendment seems never before to have been squarely decided in the Supreme Court. For the earlier Federal cases holding an office not to be property, *Butler* v. *Pennsylvania*, 10 How. 402, appear to have been disregarded of late years. In fact there are several decisions where the affirmative of this question seems to have been assumed, — and

on such the dissenting opinions rely strongly, — but in almost all of them the finding that there had been due process of law rendered unnecessary the determination of the principal question. *Wilson* v. *North Carolina*, 169 U. S. 586. In the present case, however, the court declined to take jurisdiction expressly on the ground that the right to a public office was not such a proprietary right as could claim the benefit of the Fourteenth Amendment. Moreover, whether or not there was "due process" is no more than touched upon by the Chief Justice in the majority opinion. The case would therefore seem to stand as a direct decision on the point.

State authorities on the matter are in conflict. In North Carolina it is held that although for good reason the legislature may abolish an office, or reduce the salary of the incumbent, it may not arbitrarily, and without just compensation, displace A merely to install B in his place, since A has a vested right in the office. *Hoke* v. *Henderson*, 15 N. C. 31. The more common view is that a public office is in no respects property, but a mere agency or trust of the State, with which the State may deal as it pleases. *Conner* v. *Mayor, etc. of New York*, 5 N. Y. 285. Blackstone includes an office in his list of incorporeal hereditaments, and says that the term may be in fee, for life, or for years. 2 Bl. 36. In this country it is undoubted that a political office can never be held in fee, and it can hardly be considered as capable of absolute tenure for life or for years, since, as is universally held, the legislature may, in the absence of an express constitutional limitation, abolish or shorten the term of such office, or reduce the salary of the incumbent, without furnishing any compensation. This power, according to those who contend that an office is property, is put on grounds of public policy. The Supreme Court seems to have acted wisely in adopting the more general view, and in finally clearing away from a practical question the cobwebs of antiquated law.

THE LEGALITY OF STRIKES. — A recent decision by the Massachusetts court is of interest, as showing the practical difficulties in applying the doctrine that malicious interference with business is wrongful. In *Vegelahn* v. *Guntner*, 167 Mass. 92, "picketing" was held to be illegal. 10 HARVARD LAW REVIEW, 301. The court has recently decided that, in some cases, a labor union will be restrained from threatening to strike. *Plant* v. *Woods*, 57 N. E. Rep. 1011 (Mass.). In this case, the defendant union conspiring to force the plaintiffs, members of a rival union, to join their organization, intimated to the plaintiff's employer that unless the plaintiffs did so join or were discharged from their employment, strikes would be declared against him. The court held this action to be unjustifiable intimidation and granted an injunction restraining its continuance.

The same court has already decided that a combination is justified in taking steps to strengthen its organization at the expense of others. *Bowen* v. *Matheson*, 14 Allen, 499. Hence the obvious inference is, that motive alone does not determine the justification. In the principal case, the court finds an added element in that their threat meant more than a withdrawal. It meant that a refusal would be followed not only by a strike but also by the violence and annoying conduct which usually accompany strikes. Although this conduct may not be sanctioned by